

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

REGISTRANT: Kuykendal et al.
PATENT NO.: 6,308,610
ISSUED: Oct. 30, 2001
FOR: Liquid Cannon Having
Trunnion Assembly

GAU: 3641
EXAMINER: Jordan, Charles T.
St. Louis, Missouri
Date: May 22, 2009
DN: WW-8

Commissioner for Patents
MS-Petitions
P.O. Box 1450
Alexandria, Virginia 22313-1450

**PETITION FOR RECONSIDERATION OF A DISMISSED PETITION TO
ACCEPT UNAVOIDABLY DELAYED PAYMENT OF MAINTENANCE FEE
IN EXPIRED PATENT UNDER CFR § 1.378(E)**

Sir:

This Petition requests reconsideration of the dismissal of the previous Petition to reinstate United States Patent Number 6,308,610, upon a Liquid Cannon Having Trunnion Assembly. This petition for reconsideration is filed pursuant to 37 CFR § 1.378(e) and a fee of \$400 is submitted. The previous petition was for acceptance of the delayed payment of the first maintenance fee due upon this patent as unavoidably delayed under 37 CFR § 1.378(b).

On or before October 1998, the Patentee engaged Mr. Henry Cummings, patent attorney, to prosecute the application on Patentees' behalf that became patent No. 6,308,610, see Affidavit of Robert Kuykendal, para. 2, hereinafter Affidavit. In due course, on or about November 2001, the Patentees received the bound and ribboned patent No. 6,308,610 from Mr. Cummings, see Affidavit para. 3. From correspondence sent with the bound and ribboned patent No. 6,308,610, Mr. Cummings offered to track the maintenance fee due dates for this patent, see Affidavit para 4. The Patentees accepted Mr. Cummings' offer to track the maintenance fee due date for this patent.

The Patentees acknowledge that they continued to correspond with Mr. Cummings on various later inventions and had various written and oral communications with Mr. Cummings from 2001 through 2006, see Affidavit para 5. In time, the Patentees particularly engaged and obligated Mr. Cummings to track the maintenance fee due date on or after January 2, 2005 before the expiration of this patent No. 6,308,610, see Affidavit para. 6.

As prudent businessmen, the Patentees engaged an agent, Mr. Cummings, to mind important business including maintenance fee due dates, see Affidavit para. 7. From time to time, the Patentees inquired and monitored the maintenance fee due date through the Patentees' agent Mr. Cummings, see Affidavit para. 8. When the first maintenance fee was due in 2005, the Patentees were represented by Mr. Cummings who had prosecuted the application that became this patent. More particularly, on or about January 2006, the Patentees received a request from Mr. Cummings for a check in the amount of the maintenance fee due and that such a check was provided by the Patentees at the end of that month, see Affidavit para. 9.

On or after February 2006, the Patentees do not recall hearing from Mr. Cummings about any discrepancies with the maintenance fee, see Affidavit para. 10. The Patentees thus relied upon their attorney Mr. Cummings to track and then to submit the maintenance fee for this patent. Unfortunately, on or about April 24, 2007, the family of Mr. Cummings notified Patentee Kuykendal of the closure of his practice, see Exhibit D.

On or about Sep. 2007, the Petitioner was contacted by the family of Mr. Cummings, the then attorney of record for this patent. The family of Mr. Cummings indicated that he had and continues to experience unforeseen medical circumstances that made it impossible for him to properly submit on behalf of the Patentees the maintenance fee due for this particular patent.

Upon further investigation, Mr. Cummings has had dementia from Alzheimer's disease since at least November 2005, see Exhibit E. Dr. Binder wrote that Mr. Cummings had poor judgment in relation to the details of bill

paying and short term memory loss, *Id.* Dr. Binder's contact information is provided as Exhibit E'. Shortly after the initial diagnosis, Dr. Williams took notes during a family conference on December 7, 2005 where Mr. Cummings' memory problems were described as exceeding those typical for his age, see Exhibit F. Then Dr. Villareal noted that Mr. Cummings ought not drive a motor vehicle and lacks insight into his current activities in the conference notes of October 17, 2006, see Exhibit G. Dr. Villareal's contact information is also provided upon Exhibit E'. On or about April 8, 2008, Dr. Piening also wrote of Mr. Cummings' condition as making him unaware of his limitations in judgment and short term memory, see Exhibit H.

Meanwhile, on or before October 3, 2006, the Office of Enrollment and Discipline opened an investigation of Mr. Cummings for submission of incorrect filing fees during the period of January 5, 2006 through May 18, 2006, see Exhibit I. In time, Mr. Cummings consented to withdrawing from practice before the Patent Office on or after August 21, 2008 to close the investigation, see Exhibit J.

On or about November 5, 2007, Patentee Kuykendal received a letter from Mr. Charles McCloskey, patent attorney, now Petitioner, regarding the closure of Mr. Cummings practice, see Affidavit para. 10a. Next, Patentee Kuykendal met with Mr. McCloskey on or about January 8, 2008, to discuss the status of his patents, new inventions, and this patent, see Affidavit para. 11. Patentee Kuykendal then received a letter from Mr. McCloskey regarding petitioning to reinstate patent No. 6,308,610 on or about January 21, 2008, see Affidavit para. 12.

On or about Apr. 25, 2008, the Petitioner inquired again from Patentee Kuykendal about instructions for reinstating this patent and soon thereafter on or about May 5, 2008, the instructions and funds for reinstating this Patent arrived from Patentee Kuykendal. Then the Petition was filed on June 3, 2008, under 37 CFR § 1.378(b), to reinstate United States Patent Number 6,308,610, upon a

Liquid Cannon Having Trunnion Assembly for acceptance of the delayed payment of the first maintenance fee due as unavoidably delayed.

Once more the Petitioner asserts that the delay in paying this maintenance fee was unavoidable as the previous attorney of record's decline in mental faculties, as described above, unavoidably impeded tracking of the maintenance fee and delayed payment of the maintenance fee for this patent by one engaged by the Patentees to track and to submit the maintenance fee. This Petition was filed within the two month window to request reconsideration of the previous Petition.

The Patentees have previously provided the maintenance fee in the amount of \$530 including \$65 surcharge for paying in the grace period and the unavoidable delay surcharge in the amount of \$700 by client check and \$70 by firm check for a total of \$770. A Petition fee of \$400 is submitted with this Petition for reconsideration.

The Patentees have provided an executed power of attorney appointing the undersigned as attorney of record for this patent going forward.

The undersigned attorney as Petitioner, on behalf of the Patentees, herein requests acceptance by the Office of the unavoidably delayed payment of the maintenance fee for patent No. 6,308,610 and granting of this Petition for reconsideration.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Charles C. McCloskey".

Charles C. McCloskey
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Enclosure